

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7146

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TED A. NEFF,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Lacy H. Thornburg,
District Judge. (CR-03-7; CA-05-213)

Submitted: November 22, 2005

Decided: December 6, 2005

Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Ted A. Neff, Appellant Pro Se. Thomas Richard Ascik, OFFICE OF THE
UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Ted A. Neff seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2255 (2000) motion. 28 U.S.C. § 2244(d)(1) (2000). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find the district court's assessment of his constitutional claims is debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Neff has not demonstrated error in the district court's procedural ruling. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED